IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1695 OF 2006
IN
SUIT NO.1884 OF 2006

Sant Prasad Nigam & Anr. ..Plaintiffs.

Vs.

Pramila Sondhi & Anr. ..Defendants.

Ms.S.Shamim i/b.M/s.Shamim & Co. for the Plaintiffs.
Mr.Atul Damle i/b.Mr.J.P.Dubey for Defendant No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 30TH OCTOBER, 2007

P.C. :

The suit is filed for specific performance of an agreement dated 5.9.2005 by which Defendant No.1 agreed to sell the suit flat to the Plaintiffs for a consideration of Rs.5,00,000/-. Defendant No.2 is a society in which the said flat is situated.

2. There is no dispute that the agreement was executed. Nor is there any dispute that an amount of Rs.3,43,000/- was paid by the Plaintiffs to Defendant No.1 by 1.10.2005.

3. When the suit was filed it was not disclosed in the plaint that the actual consideration was Rs.8,10,000/- and that a sum of Rs.3,10,000/- was

paid in cash. This fact was referred to in the affidavit in rejoinder. The Plaintiffs admitted that in fact a further amount of Rs.3,10,000/- was to be paid. The Plaintiffs however contend that the said amount had been paid. They further contend that a receipt in the sum of Rs.2,10,000/- has been issued. In any event, there is a dispute atleast in respect of Rs.1,00,000/-.

4. I do not for a moment suggest that the Plaintiff's explanation even regarding the said sum of Rs.1,00,000/- is incorrect. The Plaintiffs have contended that the said sum was paid but that no receipt was necessary to be executed as the agreement itself had been executed at that time. However, in view of the disputes regarding an amount of Rs.2,57,000/- atleast, I am not inclined to pass an order virtually dispossessing the Defendants. However, the interest of the Plaintiffs require to be protected. Further, there is no justification for the Defendants retaining the amount admittedly paid under the agreement.

5. Mr.Damle fairly states that the amount of Rs.3,43,000/- will be paid over to the Plaintiffs within four weeks from today or at any time

thereafter if demanded by the Plaintiffs. He further states that the Plaintiffs are at liberty to accept the same without prejudice to the Plaintiff's claim in the suit including for specific performance. The statement is accepted.

6. Further, there is no justification for requiring the Plaintiffs to deposit a sum of Rs.1,57,00/-. The Plaintiffs shall be entitled to withdraw the said amount from this Court, again without prejudice to the Plaintiff's rights and contentions including for specific performance of the suit.

7. In the circumstances, the following order is passed :-

i) Pending the hearing and final disposal of the Notice of Motion, the Defendants are restrained from alienating, encumbering, parting with possession of, or creating any third party right, title or interest in, to, upon or in respect of the said flat or any part thereof.

ii) Defendant No.1 shall within four weeks on being called upon to do so, pay a sum of

Rs.3,43,000/- to the Plaintiffs which the Plaintiffs shall be at liberty to accept without prejudice to all their rights and contentions in the suit including for specific performance.

iii) The Plaintiffs shall be entitled to withdraw the amounts deposited in this Court along with any interest which may have accrued thereon, without prejudice to the Plaintiff's rights and contentions in the suit including for specific performance.

iv) The written statement shall be filed within six weeks from today. Affidavit of documents within six weeks. Discovery and inspection forthwith thereafter. The parties have agreed to have the evidence recorded on commission for which they shall seek orders after the issues are framed.